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No. 83-620

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

LARRY WAYNE RODGERS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

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Respondent has presented no persuasive reason why this Court should not grant the petition in this case in order to resolve the square conflict among the circuits concerning the reach of 18 U.S.C. 1001. Because many of respondent's arguments were anticipated and answered in the petition, we reply here only to his suggestion (Br. in Opp. 3-4) that Congress may act to resolve the question presented by this case. That suggestion not only is speculative, but it has been refuted by recent legislative history.

Legislation was introduced in both the 95th and 97th Congresses that would have made clear that it is a violation of the false statements statute to volunteer intentionally false information to a federal law enforcement officer. S. 1630, 97th Cong., 1st Sess. § 1343 (1981); S. 1437, 95th Cong., 1st Sess. § 1343 (1977); S. Rep. 97-307, 97th Cong., 1st Sess. 401-406 (1981); S. Rep. 95-605 (Pt. 1), 95th Cong.,

1st Sess. 370-376 (1977). Although both bills passed the Senate, neither the 95th nor the 97th Congress enacted the proposal into law.[1] No comparable legislation is currently pending before Congress.

Respondent's further suggestion (Br. in Opp. 4) that the pendency of Section 1744 of H.R. 2013, 98th Cong., 1st Sess. (1983), obviates the need for review in this case is specious. That section, entitled "False statements about emergencies," extends only to a false statement that "causes a false alarm of fire or other emergency to be transmitted to or within any organization or Government agency for dealing with emergencies involving danger to life or property." Enactment of such legislation obviously would not affect the outcome of this case, which involves the typical factual pattern in which the question presented by the petition arises.[2]

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[1]The legislative history of both bills indicates that the Senate deemed them necessary not because it viewed current Section 1001 as not reaching the conduct at issue, but rather to correct what it perceived to be the erroneous, unduly restrictive construction placed on the statute by the Eighth Circuit. See S. Rep. 97-307, 97th Cong., 1st Sess. 401-406 (1981); S. Rep. 95-605 (Pt. 1), 95th Cong., 1st Sess. 370-376 (1977). Moreover, in both cases the proposed amendment of Section 1001 was part of a much more extensive revision of the federal criminal code. There is no indication in the legislative history that Congress's failure to enact either S. 1437, the Criminal Code Reform Act of 1977, or S. 1630, the Criminal Code Reform Act of 1981, was due to any dissatisfaction with the proposed amendment of the false statements law.

[2]There appears to be little likelihood of enactment of H.R. 2013 during the present Congress. No hearings have been held or are scheduled on the bill, and no companion legislation has been introduced in the Senate.

For the reasons stated above and in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

REX E. LEE
Solicitor General

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